IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2616 OF 2006

Rev.P.B.Amolik ...Petitioner

Versus

Rt.Rev.Bishop & Ors. ...Respondents

Shri V.A.Thorat, Senior counsel with Ms Gauri Jadhav for the Petitioner.
Shri N.P.Gonsalves for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : FEBRUARY 21, 2007.

P.C.:

1. Heard learned senior counsel appearing for the Petitioner. The first to third Respondents had preferred an Appeal under section 70 of the Bombay Public Trusts Act, 1950 before the learned Charity Commissioner. On 22nd December, 2003 the said Appeal came to be dismissed for default as the Advocate appointed by the Respondent Nos.1 to 3 was not present and as an Application for condonation of delay was not filed. It is mentioned in the order that process fee was not paid. An Application for restoration was made by the first to third Respondents which came to be dismissed by order dated 20th September, 2004. Apart from dismissing the said Application for default, the

learned Charity Commissioner observed that in the Application for restoration, the Appeal number was not mentioned. By the order dated 22nd February, 2006 which is impugned in this Writ Petition, the learned Joint Charity Commissioner has restored the original Appeal.

2. The learned senior counsel appearing for the Petitioner submitted that while applying for restoration, the first to third Respondents did not bring to the notice of the Joint Charity Commissioner the order dated 20th September, 2004. He submitted that the provisions of Code of Civil Procedure, 1908 are not applicable to the proceedings of Appeal before the learned Charity Commissioner and under the said Act of 1950 there was no power vested in the learned Joint Charity Commissioner to recall his earlier order or to review the order. He submitted that the original Appeal preferred by first to third Respondents is barred by limitation and till today Application for condonation of delay is not filed.

3. I have considered the submissions. The net result of the impugned order is that the Appeal preferred by first to third Respondents which was

dismissed for default due to absence of their Advocate has been restored. The Petitioner has invoked extra-ordinary jurisdiction of this court under Article 227 of the Constitution of India. In exercise of the said jurisdiction, this court need not interfere with each and every order on the ground of illegality. Substantial justice has been done by passing the impugned order by restoring the Appeals which were not dismissed on merits but which were dismissed for default. There is no failure of justice. No case is made out for interference in this Petition. It is, however, clarified that if the Appeal preferred by the first to third Respondents is barred by limitation, it will be open for the Petitioner to raise said objection before the appellate authority and the appellate authority will consider the said objection according to law. Subject to what is stated above, Writ Petition is rejected.

JUDGE